

Message

From: Leopold, Matt (OGC) [Leopold.Matt@epa.gov]
Sent: 7/14/2020 6:12:56 PM
To: McIntosh, Chad [mcintosh.chad@epa.gov]
CC: Zimmer, Nathaniel [zimmer.nathaniel@epa.gov]; Mason, Scott [Mason.Scott@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]
Subject: RE: McGirt Decision

Flag: Follow up

Hi Chad,

These are good questions. The first step is to understand whether the state will pursue the SAFETEA authority. Retroactivity of prior actions and what the state of OK's authority is at present are questions we are working through.

Thanks, Matt

-----Original Message-----

From: McIntosh, Chad <mcintosh.chad@epa.gov>
Sent: Tuesday, July 14, 2020 12:18 PM
To: Leopold, Matt (OGC) <Leopold.Matt@epa.gov>
Cc: Zimmer, Nathaniel <zimmer.nathaniel@epa.gov>; Mason, Scott <Mason.Scott@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>
Subject: RE: McGirt Decision

I think a call would be helpful -- my request was, in part, generated after discussions with Doug, Scott, and Ken.

I think the questions will be along the lines of:

Ex. 5 Deliberative Process (DP)

Chad

W.C. McIntosh
Assistant Administrator
International and Tribal Affairs
United States Environmental Protection Agency
202-564-6600

-----Original Message-----

From: Leopold, Matt (OGC) <Leopold.Matt@epa.gov>
Sent: Tuesday, July 14, 2020 11:48 AM
To: McIntosh, Chad <mcintosh.chad@epa.gov>
Cc: Zimmer, Nathaniel <zimmer.nathaniel@epa.gov>; Mason, Scott <Mason.Scott@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>
Subject: RE: McGirt Decision

Thanks for reaching out Chad. Here's an email that I sent to the Administrator and Doug and Ken McQueen. OGC should be involved in the discussion, as we are working directly with the Oklahoma AG's office. Should we all get on a call together to discuss?

On Jul 9, 2020, at 3:00 PM, Leopold, Matt (OGC) <Leopold.Matt@epa.gov> wrote:

Hello Administrator,

Given your Oklahoma contacts you may have an interest in a major Supreme Court decision issued today in McGirt v. Oklahoma. The Court ruled that, as pertaining to the Major Crimes Act, much of the eastern portion of the state of Oklahoma remains as "Indian country" of the prior Indian reservations of the Five Civilized Tribes, never disestablished by Congress as part of the Oklahoma Enabling Act of 1906. The portions of the state that are now Indian country include Tulsa, and other areas that have not ever been considered as such.

I got word from DOJ that Oklahoma is considering sending a letter to you to exercise special authority that was enacted in the SAFETEA LU bill passed years ago. This authority (quoted below) allows the State to operate delegated programs in Indian country. This is unique to Oklahoma and I believe that R6 has discussed this with the State for years, most recently for assuming the WIIN Act Coal Ash RCRA permitting program.

SEC. 10211. ENVIRONMENTAL PROGRAMS. (a) OKLAHOMA.—Notwithstanding any other provision of law, if the Administrator of the Environmental Protection Agency (referred to in this section as the ‘Administrator’) determines that a regulatory program submitted by the State of Oklahoma for approval by the Administrator under a law administered by the Administrator meets applicable requirements of the law, and the Administrator approves the State to administer the State program under the law with respect to areas in the State that are not Indian country, on request of the State, the Administrator shall approve the State to administer the State program in the areas of the State that are in Indian country, without any further demonstration of authority by the State.

(b) TREATMENT AS STATE.—Notwithstanding any other provision of law, the Administrator may treat an Indian tribe in the State of Oklahoma as a State under a law administered by the Administrator only if— (1) the Indian tribe meets requirements under the law to be treated as a State; and (2) the Indian tribe and the agency of the State of Oklahoma with federally delegated program authority enter into a cooperative agreement, subject to review and approval of the Administrator after notice and opportunity for public hearing, under which the Indian tribe and that State agency agree to treatment of the Indian tribe as a State and to jointly plan administer program requirements.

Ex. 5 Attorney Client (AC)

Matthew Z. Leopold
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Cell: (202) 594-7437

-----Original Message-----

From: McIntosh, Chad <mcintosh.chad@epa.gov>
Sent: Tuesday, July 14, 2020 11:41 AM
To: Leopold, Matt (OGC) <Leopold.Matt@epa.gov>
Cc: Zimmer, Nathaniel <zimmer.nathaniel@epa.gov>; Mason, Scott <Mason.Scott@epa.gov>
Subject: McGirt Decision

Hi Matt,
Could we please ask for your help to understand whether McGirt has implications on our Direct Implementation responsibilities, State delegations, other impacts on the NPMs and environmental responsibilities?
Discussions have been going on with Peter, Doug, Region 6 and others.

Thanks much Chad

W.C. McIntosh
Assistant Administrator
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United States Environmental Protection Agency
202-564-0306